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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/496,656	02/03/2000	Yoshimasa Saitoh	P99.2475	6539

26263 7590 03/19/2008

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EXAMINER	
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ART UNIT	PAPER NUMBER
1794	
MAIL DATE	DELIVERY MODE
03/19/2008	PAPER

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte YODHIMSDS DSIYOH
And HISANORI TSUBOI

Appeal 2007-3831
Application 09/496,656
Technology Center 1700

Decided: March 19, 2008

Before BRADLEY R. GARRIS, CATHERINE Q. TIMM, and LINDA M. GAUDETTE, *Administrative Patent Judges*.

GARRIS, *Administrative Patent Judge*.

DECISION ON REQUEST FOR REHEARING

This is in response to a Request, filed January 7, 2008, for rehearing of the Decision, mailed November 29, 2007, wherein we sustained the § 103 rejection of all appealed claims as being unpatentable over Gibbons in view of Park.

Appellants "submit that the Board has overlooked that even if one were to categorize claim 8's language relating to exposure energy ratio as a

product-by-process claim limitation, it would be wrong to ignore this limitation" (Request 2). According to Appellants, this is because "the claimed exposure energy ratio of 5:1 imparts a distinctive structural characteristic to the liquid crystal display device [, namely,] the device's pre-tilt angle of 3.5º or greater" (*id.*). Appellants' position is not well taken for several reasons.

First, as fully explained in our Decision, the Examiner had concluded that it would have been obvious to provide the liquid crystal display device of Gibbons with a pre-tilt angle of 3.5º or greater, and Appellants had not contested this obviousness conclusion with any reasonable specificity in their Appeal and Reply Briefs (Decision 3). Based on this uncontested conclusion of obviousness, we agreed with the Examiner's position that the claim 8 display device having a pre-tilt angle of 3.5º or greater is indistinguishable from the modified display device of Gibbons having a corresponding pre-tilt angle even if the respective devices were made by different processes (Decision 4). Moreover, we stated that "[t]hese circumstances evince a prima facie case of obviousness which has not been rebutted on the record of this appeal" and that, "[f]or this reason alone, it is appropriate to sustain the § 103 rejection" (*id.*).

In the subject Request, as in the earlier filed Appeal and Reply Briefs, Appellants do not explain why their claim 8 device distinguishes from the modified Gibbons device even if the pre-tilt angle of the latter is made by a process which does not include Appellants' claimed exposure energy ratio of

5:1. Therefore, Appellants' Request fails to establish error on our part in sustaining the § 103 rejection for the reasons discussed above.[1]

Second, contrary to Appellants' implication, our Decision did not ignore the claim 8 energy exposure ratio of 5:1. Rather, as an additional reason for affirming the § 103 rejection, we determined that Gibbons evinced exposure energy ratio to be an art-recognized, result-effective parameter for achieving a desired pre-tilt angle (Decision 5). In light of this determination, we concluded that it would have been obvious to provide the display device of Gibbons with a pre-tilt angle of 3.5° or greater via an exposure energy ratio of 5:1 based on the established legal principal that it would have been obvious for an artisan to develop workable values for an art-recognized, result-effective parameter (*id.*).

Appellants argue that Gibbons fails to suggest a correlation between exposure energy ratio and pre-tilt angle (Request 3). We do not agree. For the reasons detailed in the first full paragraph on page 8 of the Decision, we maintain our determination that an artisan having read the column 7 disclosure of Gibbons would have recognized exposure energy ratio as having a resulting effect on the degree of pre-tilt angle.

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[1] To the extent this Request for Rehearing now attempts to contest the Examiner's above discussed obviousness conclusion, we decline to consider and respond to such an attempt. This is because arguments not raised in the Briefs are not permitted in a Request for Rehearing (37 C.F.R. § 41.52(a)(1)) and, as previously indicated, the Examiner's conclusion of obviousness had not been contested by Appellants in their Appeal and Reply Briefs.

The Request for Rehearing is DENIED.

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